

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BILLY CEPERO,

Petitioner,

vs.

BRIAN WILLIAM, et al.,

Respondents.

Case No. 2:14-cv-01397-JAD-PAL

ORDER

Petitioner has paid the filing fee. The court has reviewed his petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Petitioner will need to file an amended petition.

In state district court, petitioner was convicted of home invasion. Michael Sanft represented petitioner through sentencing. Petitioner appealed, and Thomas Michaelides represented him during that appeal. The Nevada Supreme Court affirmed on September 14, 2011. Petitioner then filed a state habeas corpus petition on April 2, 2013. Roy Nelson represented petitioner in the state district court. The state district court denied the petition, petitioner appealed, and Christopher Oram represents petitioner on appeal. It appears from the petition that the appeal is pending before the Nevada Supreme Court.

All three grounds of the petition share the same two defects. First, the grounds are too vague. Ground 1 states that Sanft was ineffective in his representation of petitioner in the trial court. Ground 2 states that Michaelides was ineffective in his representation of petitioner on direct

1 appeal. Ground 3 states that the trial court erred and that the prosecution committed misconduct
 2 during the proceedings.

3 In ordinary civil proceedings, the governing Rule, Rule 8 of the Federal Rules of Civil
 4 Procedure, requires only “a short and plain statement of the claim showing that the pleader is
 5 entitled to relief.” Fed. Rule Civ. Proc. 8(a)(2). Rule 2(c) of the Rules Governing Habeas
 6 Corpus Cases requires a more detailed statement. The habeas rule instructs the petitioner to
 “specify all the grounds for relief available to [him]” and to “state the facts supporting each
 ground.”

7 Mayle v. Felix, 545 U.S. 644, 649 (2005).

8 A prime purpose of Rule 2(c)’s demand that habeas petitioners plead with particularity is to
 9 assist the district court in determining whether the State should be ordered to “show cause
 10 why the writ should not be granted.” § 2243. Under Habeas Corpus Rule 4, if “it plainly
 11 appears from the petition . . . that the petitioner is not entitled to relief in the district court,”
 the court must summarily dismiss the petition without ordering a responsive pleading. If the
 court orders the State to file an answer, that pleading must “address the allegations in the
 petition.” Rule 5(b).

12 Id. at 656. Petitioner does not provide any facts to support his allegations. He does not allege what
 13 Sanft or Michaelides did or should have done. He does not allege what errors the trial court
 14 committed. He does not allege what misconduct the prosecution committed. In an amended
 15 petition, petitioner will need to allege facts that can support his grounds.

16 Second, in all three grounds petitioner alleges that Nelson, his attorney in the state habeas
 17 corpus proceedings, never briefed any of these issues. To the extent that petitioner is trying to claim
 18 that Nelson provided ineffective assistance, that claim fails. Petitioner has no right to effective
 19 assistance of post-conviction counsel. Petitioner does not have a right to effective assistance of
 20 counsel in state post-conviction habeas corpus proceedings. Coleman v. Thompson, 501 U.S. 722,
 21 752 (1991). Petitioner needs to omit these allegations in his amended petition.

22 Petitioner has submitted a motion for appointment of counsel (#2). Whenever the court
 23 determines that the interests of justice so require, counsel may be appointed to any financially
 24 eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district
 25 court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to
 26 articulate his claims pro se in light of the complexity of the legal issues involved.” Weygandt v.
 27 Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas
 28 proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider are not

1 separate from the underlying claims, but are intrinsically enmeshed with them. Weygandt, 718 F.2d
2 at 954. After reviewing the petition, the court concludes that appointment of counsel is not
3 warranted.

4 IT IS THEREFORE ORDERED that the motion for appointment of counsel (#2) is
5 **DENIED.**

6 IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a writ of
7 habeas corpus pursuant to 28 U.S.C. § 2254.

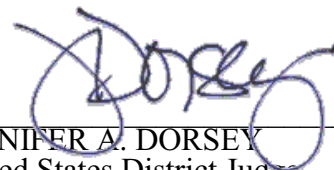
8 IT IS FURTHER ORDERED that the clerk of the court shall send petitioner a petition for a
9 writ of habeas corpus pursuant to 28 U.S.C. § 2254 form with instructions. Petitioner shall have 30
10 days from the date that this order is entered to file an amended petition to correct the noted
11 deficiencies. Neither the foregoing deadline nor any extension thereof signifies or will signify any
12 implied finding of a basis for tolling during the time period established. Petitioner at all times
13 remains responsible for calculating the running of the federal limitation period and timely asserting
14 claims. Failure to comply with this order will result in the dismissal of this action.

15 IT IS FURTHER ORDERED that petitioner shall clearly title the amended petition as such
16 by placing the word "AMENDED" immediately above "Petition for a Writ of Habeas Corpus
17 Pursuant to 28 U.S.C. § 2254" on page 1 in the caption, and petitioner shall place the docket
18 number, 2:14-cv-01397-JAD-PAL, above the word "AMENDED."

19 IT IS FURTHER ORDERED that the clerk shall add Catherine Cortez Masto, Attorney
20 General for the State of Nevada, as counsel for respondents.

21 IT IS FURTHER ORDERED that the clerk shall electronically serve upon respondents a
22 copy of the petition and this order. Respondents' counsel shall enter a notice of appearance within
23 20 days of entry of this order, but no further response shall be required from respondents until
24 further order of the court.

25 DATED: October 24, 2014

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JENNIFER A. DORSEY
United States District Judge